

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Suga Ray's Sports Grill, LLC)
Patrena V. McGee, Managing Member)
Applicant (COP-IA))
for the premises located at)
3813-3815 West Chicago Avenue) Case No. 08 LA 83
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Norma I. Reyes, Commissioner)
)

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER SCHNORF

The applicant filed a timely Notice of Appeal from the decision of the Local Liquor Control Commission which denied its application of a Consumption on Premises - Incidental Activity license. The denial was based on the Local Liquor Control Commission's determination that the premises at 3813-15 W. Chicago Avenue was within 100 feet of M.B. Church and, as such, the premises could not have a liquor license pursuant to 235 ILCS 5-6-11(a). The matter proceeded to hearing on March 24 and June 9, 2009.

235 ILCS 5-6-11(a) states in pertinent part that "No license shall be issued for the sale at retail of any alcoholic liquor within 100 feet of any church... In the case of a church the distance of 100 feet shall be measured to the nearest part of the building used for worship services or educational programs and not to the property itself." The Liquor Control Act does not define the term church.

A review of the Chicago Municipal Code finds to churches and house of worship but no specific definition of church. Section 17-17-0103-I does define Religious Assembly as “Religious services involving public assembly such as customarily occur in synagogues, temples, mosques and churches.” The 4th District of the Illinois Appellate Court defined the term church as “a building consecrated to God, regularly used for worship.” Twin-City Bible Church v. The Zoning Board of Appeals of the City of Urbana, 50 Ill.App.3d 924, 365 N.E.2d 1381 (1977). Chicago Avenue is a commercial area under the City of Chicago’s Zoning Ordinance. Under this zoning ordinance churches are not allowed in commercial districts unless a special use permit has been obtained. The parties stipulated that no such special use permit has been issued for the premises at 3816 W. Chicago Ave., the site of the Missionary Baptist Church, or the Three Way M. B. Church at approximately 3819 W. Chicago Ave.

Revenue Investigator Weller testified that on September 23, 2008, he measured the distances from Suga Ray’s to the M.B. Church and the Three Way M.B. Church. The respective distances were 79 feet, 1 inch and 23 feet, 3 inches. He spoke with some neighborhood people and a representative of Suga Ray’s who stated services were held at the M.B. Church on occasion. He also testified that the Three Way M.B. Church’s location was not a disqualifying factor since that church was in a mixed use location which Revenue does not consider a church. Reverend Cornelius Members and Deacon Members testified that the M.B. Church has been at the 3816 W. Chicago location for eleven years and they conduct services on a regular basis on Wednesdays, Fridays and Sundays.

This case seems to deal with conflicting statutes. The Illinois Liquor Control Act

prohibits issuance of any liquor license to an establishment within 100 feet of a church. The City of Chicago Zoning Code does not allow a church at 3816 W. Chicago or at 3819 W. Chicago. While counsel for the City correctly argued that the state statute does not say that the church must be a legal entity such a reading of the statute would not be giving deference to the intent of the statute. While religious activities may very well be ongoing at the M.B. Church as testified to by the Pastor and Deacon such religious activities do not avoid the fact that a church is not allowed at those addresses.

The Zoning Ordinance allows requests for special uses and had either church in this case received such a special use then the prohibition under the state statute would clearly apply.

While this Commission does not sit as a court of equity it does seem arbitrary and capricious to deny a license to an applicant who has met all the qualifications and is properly zoned because of an illegally zoned church.

Since the Zoning Ordinance of the City of Chicago does not allow churches on this block of Chicago Avenue the premises at 3816 W. Chicago and 3819 W. Chicago are not churches. They may be considered places where religious activities take place but legally they are not churches. In addition, with respect to 3819 W. Chicago, there was no evidence presented that religious services occurred there and the City's own witness said mixed use occupancy buildings are not considered churches by the Department of Revenue.

The decision of the Local Liquor Control Commission denying the Consumption on

Premises - Incidental Activity License to Suga Ray's in reversed.

THEREFORE, IT IS HEREBY ORDERED That the said order or action of the Local

Liquor Control Commissioner of the City of Chicago be and the same hereby is REVERSED.

Pursuant to Section 154 of the Illinois Liquor Control Act, a petition for rehearing may be filed with this Commission within TWENTY (20) days after service of this order. The date of the mailing of this order is deemed to be the date of service. If any party wishes to pursue an administrative review action in the Circuit Court, the petition for rehearing must be filed with this Commission within TWENTY (20) days after service of this order as such petition is a jurisdictional prerequisite to the administrative review.

Dated: July 24, 2009

Dennis M. Fleming
Chairman

Stephen B. Schnorf
Member